it appeared that an irrigation canal ran across the land by virtue of an easement. *Held*, that this does not amount to an incumbrance within the meaning of the covenant. *Schurger* v. *Moorman*, 117 Pac. 122 (Idaho).

For a discussion of the principles involved, see 24 HARV. L. REV. 237.

DAMAGES — MEASURE OF DAMAGES — EFFECT OF RESALE IN CASES OF DELAYED DELIVERY. — The defendant contracted to deliver wood pulp to the plaintiff by the last of November, 1900, at 25*s.* per ton. Delivery was not made until July 1, 1901. Pulp was then worth 42*s.* 6*d.* per ton. In November, 1900, it was worth 70*s.* per ton. The plaintiff resold the pulp under contracts, some anterior to the contract with the defendant, and some anterior to the date of actual delivery, at 65*s.* per ton. He then sued for damages caused by the delay. There was no question of consequential damages. *Held*, that he may recover only 5*s.* per ton. *Wertheim* v. *Chicoutimi Pulp Co.*, [1911] A. C. 301 (Privy Council).

The general intention of the law of damages is to place the plaintiff in as good a position as he would have been in if the contract had been performed, *i. e.* to compensate only. *Hamilton* v. *Magill*, 12 L. R. Ir. 187, 202. With this in view, a formula for compensating for late delivery in sales of personalty has been often adopted, namely, "the difference between the value of the goods at the date fixed for delivery, and their value when delivered." This rule is, speaking generally, correct. *Clement & Hawkes Mfg. Co.* v. *Meserole*, 107 Mass. 362, 364. See BENJAMIN, SALES, 5 ed., 987. The principal case, however, gives as the proper measure of damages the difference between the value when the goods should have been delivered and the value represented by the price for which they were resold. If the contracts of resale could be satisfied by delivering this specific pulp only, then the rule of the principal case is probably correct. But, if any pulp of that certain grade would have answered the purposes of the sub-sale, it seems that the defendant should not take advantage of the plaintiff's good bargain in reselling. *Cf. Floyd* v. *Mann*, 146 Mich. 356, 369; *Rodocanachi, Sons & Co.* v. *Milburn Bros.*, 18 Q. B. D. 67, 77. But *cf. Foss* v. *Heineman*, 128 N. W. 881 (Wis.). The facts are not clear as to this. The case, however, is novel and there is a dearth of authority directly on the point decided.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY — PENAL STATUTES. — The sole beneficiary under the death statute released all claim of damages for the death. The administrator of the deceased now sues under the statute. *Held*, that the release operates as a bar. *Kennedy* v. *Davis*, 55 So. 104 (Ala.).

In an action for death by wrongful act, under the Missouri death statute, the plaintiff, the widow of the deceased, offered evidence of the number and ages of her minor children as evidence of loss of support. *Held*, that the evidence is admissible, as the statute is "remedio-penal." *Boyd* v. *Missouri Pacific Ry. Co.*, 139 S. W. 561 (Mo., Supr. Ct.).

The death statutes of most of the states are copied from Lord Campbell's Act, 9 & 10 VICT. c. 93, §§ 1, 2. Three states, however, have death statutes which do not, like that act, provide for damages based on the injury caused by the homicide. The Massachusetts statute provides for damages proportioned to the degree of culpability. MASS. R. L., c. 171, § 2. The Massachusetts decisions hold this statute penal. *Hudson* v. *Lynn & Boston R. Co.*, 185 Mass. 510. Yet a recent Massachusetts case intimates that there can be but one recovery against joint offenders. See *D'Almeida* v. *Boston & Maine R. Co.*, 95 N. E. 398, 399 (Mass.). The Alabama statute provides for damages "such as the jury may assess." ALA. CODE, § 2486. The Alabama court has many times held this statute penal, and excluded evidence of pecuniary loss. *Louisville & Nashville R. Co.* v. *Tegner*, 125 Ala. 593. Yet the same court has held that the defendant may be forced to give evidence against himself, as the